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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,425	02/22/2002	Troy Curtiss	UTL 00179	8289

7590 03/11/2005

Kyocera Wireless Corp.
Attn: Patent Department
PO Box 928289
San Diego, CA 92192-8289

EXAMINER

PHU, SANH D

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/080,425

Applicant(s)

CURTISS ET AL.

Examiner

Sanh D Phu

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-28.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

ATTACHMENT

This Attachment is responsive to the Applicant's Response filed on 2/18/05.

The applicant mainly argues that with respect to independent claims 1, 9, 13, 22 and 26, the combination of Hutchison and Chang discloses or suggests all the limitations, as claimed, because Chang does not disclose the claimed limitation "control data", and Chang's data (e.g., Software Version Number (SVN), VR mode, Carkit status, etc.) is not control data.

The examiner respectfully disagrees. Chang's data (e.g., Software Version Number (SVN), VR mode, Carkit status, etc.) can be considered as control data, and it can be explained as following.

Chang discloses a communication device (100) controlling operations/functions of an external accessory (102) (e.g., modes of operation including voice recognition, echo cancellation, gain control, etc.) (See figure 1 and col. 3, lines 11-58). In operation, the communication device receives information data (e.g., Software Version Number (SVN), Carkit status, VR mode, etc.) from the external accessory.

The communication device, based upon the received Software Version Number, can determine whether the software version number of the external accessory is of a correct version to support certain applications, such as voice recognition (see col. 5, lines 42–49), so that the communication device can soon latter change its corresponding software to match with the software version number of the external accessory in order to properly control operations/functions, (e.g., voice recognition) of the external accessory; otherwise the controlling would not be proper. Therefore, the received Software Version Number can be considered as control data because it affects the controlling of the communication system on the external accessory.

The communication device, based upon the received Cartkit Status, can check the consistency or the operation modes between the microprocessor (106) and the AUX DSP (116) (see figure 1, and col. 5, lines 50–55). If the actual mode (conveyed in the received Cartkit Status) reported from by the AUX DSP is different than that expected by the microprocessor, the microprocessor may order the external accessory to change its operation status, or the microprocessor may change its own internal status to regain consistency with

the external accessory for the controlling (see col. 5, lines 58–64). Therefore, the received Carokit Status can be considered as control data because it affects the controlling of the communication system on the external accessory.


As for the received VR mode, it may report to the communication device the VR mode and solicit a display in the communication device to provide the user of the communication device, in controlling the external accessory, appropriate visual user feedback (e.g., menus and message) to guide the user while operating the controlling in VR mode (see col. 8, lines 31–35). Therefore, the received VR mode can be considered as control data because it affects the controlling of the communication system on the external accessory via the user.

Further, the claims does not have other limitations in describing the claimed “control data” in order to make it distinguishable from Chang control data or describing how the claimed “control data” is used to operate the claimed “accessory” in order to make it distinguishable from how Chang control data is used in controlling Chang accessory (102). Furthermore, even though, in the Remarks on page 2, the applicant attempts to point out the differences between the claimed “control data” and Chang control data by arguing that the

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claimed "control data " is data that controls accessory or electronic device operation or interaction or software code or software patches or updates and may optionally be encapsulated within a packet and may include execution or activation instructions. Accessory interaction is defined herein to mean the operations, communications or interface that occurs between an accessory and an electronic device prior to, during, and after their use together. However, these information are not recited in the claims.

Based on the above rationale, it is believed that the limitations of claims are still met and therefore, the rejections are still maintained.


LEE NGUYEN
PRIMARY EXAMINER